V. THE MULTICHANNEL, MULTIMEDIA ENVIRONMENT OF THE LATE 1990s BEARS LITTLE RESEMBLANCE TO THAT OF 1975; BROADCASTERS AND NEWSPAPER PUBLISHERS FACE INTENSE COMPETITION FROM A RAPIDLY EXPANDING HOST OF MEDIA OUTLETS THAT PRESENT CONSUMERS WITH ABUNDANT INFORMATION OPTIONS.

When the Commission first promulgated the newspaper/broadcast cross-ownership rules in 1975, the mass-communications landscape -- with its foundation solidly grounded in newspapers, radio, and broadcast television -- bore little resemblance to today's multichannel, multimedia terrain. Over the past two decades, the "traditional" media outlets have enjoyed dynamic growth. At the same time, a diverse array of new entrants has fostered a thriving competitive marketplace. Moreover, the maturation of the cable television industry along with technological innovations such as direct broadcast satellite ("DBS") service and the Internet -- which has emerged virtually overnight as a major source of information and viewpoints on every subject imaginable -- now ensure the availability of a multitude of independent and diverse media voices to American consumers.

A. Over the Past Two Decades, the Enormous Growth and Near-Universal Availability of the Traditional Broadcasting Media, Newspaper Publishing, and Cable Television Have Transformed the Media Marketplace.

1. The Number and Variety of Radio Broadcast Stations Have Increased Dramatically Since 1975.

Radio broadcasting has continued to enjoy dynamic growth since 1975 in nearly every aspect of marketplace measurement. As a result, a wealth of local, regional, and national programming options are available to listeners. Since the adoption of the newspaper/broadcast cross-ownership restriction, the total number of licensed radio stations in the U.S. has increased by nearly 50 percent -- from 8,094 in January 1975[44] to 12,128 by the end of March 1997.[45] Much of this rise can be attributed to the rapid expansion of FM radio; the number of FM stations licensed today, 7,307,[46] is more than double the number (3,617) authorized in 1975.[47]

Further evidence of the highly competitive nature of today's radio marketplace is provided by examination of the relevant statistics for virtually any U.S. city. For example, Evansville, Indiana, is ranked as the 150th largest market by Arbitron. It has ten radio stations competing for advertising revenue, and six of those stations billed in excess of $1 million annually.[48] Competition is even more vigorous in larger markets. In Salt Lake City, Utah, the 35th largest market, for example, market guides list twenty radio competitors (and thirteen separately owned radio groups), seventeen of which have advertising billings in excess of $1 million annually.[49]

Given this increase in the sheer number of radio stations, and the related drive to continually increase audience levels and advertising revenues, it is no surprise that

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44 See Broadcasting & Cable Yearbook 1996, at B-671.

45 Broadcast Station Totals as of March 31, 1997, FCC Mimeo No. 73321 (Apr. 7, 1997) ("Broadcast Station Totals").

46 Id.

47 Broadcasting & Cable Yearbook 1996, at B-671 (1996).

48 See James H. Duncan, Duncan's Radio Market Guide (Jan. 1996 ed.).

49 See id.

station managers have shifted away from generic, lowest-common-denominator content. Instead, they have focused on offering programming that meets the needs of their local communities. Indeed, radio has seen an explosion in program format diversity in recent years. Broadcasting & Cable Yearbook, which tracked just fifteen format options as recently as 1982, now recognizes ninety-one distinct radio formats.[50] Of principal importance with respect to the issues under consideration in this proceeding are increasingly popular radio formats such as "educational," "news," "news/talk," "public affairs," and "talk." By the end of 1995, 712 stations aired a "news" format, 538 carried "talk" programming, and 1,022 aired "news/talk."[51] In addition, instructional educational formats were broadcast on 252 stations, and 62 "public affairs" formats were available to listeners in various communities nationwide as well.[52]

In addition to the recent diversification in available radio format choices, consumers also benefit from the number and variety of regional and syndicated radio programming networks in the radio marketplace. Aside from the major national radio networks, there are over sixty regional networks that include programmers such as the

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[50] Compare Broadcasting & Cable Yearbook 1982, at D-77 - D-98, with Broadcasting & Cable Yearbook 1996, at B-589.

[51] See Broadcasting & Cable Yearbook 1996, at B-590. A radio format is defined as programming broadcast at least 20 hours weekly. See id. at B-589. Thus, a station airing a combination of formats may appear under more than one format listing, though some formats, such as "news/talk" and "news," do not appear to overlap. See id. at B-623-26.

[52] See id. at B-590.

Illinois News Net and the South Carolina Network.[53] In addition, stations can purchase radio programming material from any of the nation's 243 syndicated radio programmers.[54] This abundant choice of programming offerings, coupled with the tremendous increase in program format diversity and growth in the number of radio stations, reveals a healthy, competitive radio marketplace offering consumers a wide range of independent voices and diverse program content.

2. Over-the-Air and Cable Television Offer a Rich Diversity of Programming to Virtually Every Household in the United States.

Since 1975, television programming, both over-the-air and cable-delivered, has enjoyed continued growth and ever-increasing diversity. Over the past 22 years, the number of licensed television broadcast stations has increased from 1,010[55] to 1,553,[56] a gain of more than fifty percent. In addition, nearly all viewers now have a substantial number of over-the-air television programming choices. Even six years ago, when the Commission released the results of its staff's study of the video marketplace, 95 percent of all television households were in markets with five or more television stations, and the majority of television households were in markets with ten

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[53] See Radio Business Report; Source Guide and Directory at 5-23 (Vol. 2 1994).

[54] See id. at 5-23 - 5-24.

[55] See Broadcasting & Cable Yearbook 1996, at C-244.

[56] Broadcast Station Totals.

television stations or more.[57] Moreover, the number of independent stations is on the rise; from 1980 to 1990, for example, the number of independent stations tripled from 129 to 380.[58] Additionally, digital television, which will offer far more channel capacity than present-day broadcast television, a sharper picture, and CD-quality sound,[59] is now scheduled to be available to some viewers by the end of next year and to most major television markets by 1999.[60]

The healthy growth in broadcast television, moreover, has been complemented by remarkable gains both in penetration and in subscribership by the cable television industry. Indeed, cable television is now a permanent feature of the mass-media landscape; cable is presently available to 97 percent of all U.S. households, and two-thirds of all U.S. television households subscribe to cable service.[61] By contrast, in 1975, when the Commission adopted the newspaper/broadcast cross-ownership

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[57] See Florence Setzer and Jonathan Levy, Office of Plans and Policy, Fed. Communications Comm'n, Working Paper No. 26, Broadcast Television in a Multichannel Marketplace, DA 91-817, at 4013-14 (rel. June 27, 1991) ("OPP Working Paper").

[58] See Policy and Rules Division, Mass Media Bureau, Overview of the Television Industry at 1 (Mar. 1992)

[59] See Chris McConnell, DTV: The Work Begins, Broadcasting & Cable, Apr. 7, 1997, at 7.

[60] See Fifth Report and Order in MM Docket No. 87-268 (Advanced Television Systems), FCC 97-116 (Apr. 21, 1997); Sixth Report and Order in MM Docket No. 87-268 (Advanced Television Systems), FCC 97-115 (Apr. 21, 1997); Mark Landler, Industries Agree on U.S. Standards For TV of Future, Wall St. J., Nov. 26, 1996, at A1.

[61] See Paul Kagan Assoc., Inc. The Kagan Media Index, No. 120, Feb. 28, 1997, at 8 ("The Kagan Media Index").

restrictions, only 17 percent of U.S. television households subscribed to cable.[62] This explosive growth has contributed substantially to the variety of media voices available to consumers.

Cable television systems offer a broad range of programming -- local and regional offerings in particular -- and compete aggressively with over-the-air services as well as with daily newspapers for subscribers (viewers) and for advertising revenues.[63] Indeed, many independently owned cable systems serving adjacent portions of the same market now provide "interconnect" arrangements whereby advertisers can buy advertising time on all of the participating systems with one purchase. Such arrangements enable advertisers to achieve greater geographical "reach" without the need to enter into multiple transactions with several different cable operators.

Today, nearly 80 percent of cable systems have the capacity to offer thirty or more cable channels, and nearly one-half of all cable subscribers are served by high capacity systems that provide 54 or more channels.[64] Moreover, fiber optics, digital signal compression, and a host of other technological advances promise to allow cable

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[62] OPP Working Paper at 4008-09.

[63] In 1996, the cable industry accounted for $4.4 billion in advertising revenues, or 2.5 percent of the national total, an increase of 23.7 percent over the previous year. See Newspaper Association of America, Facts About Newspapers 1997, at 10 (1997) ("NAA Facts About Newspapers"). Cable advertising was virtually non-existent in 1975. See OPP Working Paper at 4047.

[64] Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, FCC 96-496, ¶¶ 16-17 (Jan. 2, 1997) ("1997 Competition Report").

systems (not to mention telephone video providers) to offer hundreds of channels in the foreseeable future. The sheer number of current channels, and the likelihood of substantial increases in channel capacity in the near future, has led to a tremendous increase in the number of programming options available to video consumers. At present, there are over 100 national and regional cable programming networks.[65] In the past ten years alone, the combined full-day audience of cable networks increased from an 11 percent share to a 30 percent share of television viewing hours.[66] In addition, virtually all cable systems offer public, educational, and governmental ("PEG") channels, and many offer local cable news, educational, and public affairs programming as well. Moreover, many cable systems, hoping to augment their available content options, have begun to offer audio programming in direct competition with local radio broadcasters. For example, in Omaha, Nebraska, Cox Communications offers consumers thirty-one channels of digital music as part of its cable television subscription package.[67]

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[65] See id. at Appendix G, Tables 1-2. The Commission's Report lists 67 national programming services owned, in part, by cable operators and another 80 independently owned national programming services. See id.

[66] Id. ¶ 18. At the same time, the combined audience of the network affiliated, independent, and public broadcast television stations has decreased from an 87 percent share to a 72 percent share of television viewing hours. See id.

[67] See Jim Minge, Digital Radio New Choice, The Omaha World-Herald, Mar. 2, 1996, at 53-SF.

3. The Number and Variety of Newspapers and Their Ability to Reach Diverse Segments of the Population Also Have Increased Greatly.

Since the newspaper/broadcast cross-ownership ban was first instituted, the number of daily newspapers published in the United States has declined from 1,756 to 1,520.[68] Nevertheless, overall circulation of U.S. daily newspapers has held relatively steady, declining from 60.7 million to 57 million total morning and evening, but increasing from 51.1 million to 60.8 million on Sundays.[69] At the same time, smaller independent local newspapers, many of which are published weekly, have thrived. In 1975, the 7,612 weekly newspapers in the U.S. enjoyed an average circulation of approximately 35.9 million per week.[70] By the end of 1996, however, the number of such newspapers had risen to 7,915, with a staggering leap in weekly circulation to 81.6 million.[71] Much of this growth is due to the widespread proliferation of independent weekly newspapers that focus on serving local community needs.[72] By covering local politics, neighborhood businesses, and other local and regional concerns and developments, the hundreds of independent weekly newspapers

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[68] See NAA Facts About Newspapers at 23.

[69] See id. at 13.

[70] See id. at 25.

[71] See id. Although NAA changed its information collection procedures for the years 1994-96, the total circulation of weekly newspapers in 1993, the most recent statistically comparable year, had risen to 56.7 million. Id.

[72] See Elizabeth Gleick, Read All About It, Time, Oct. 21, 1996, at 66, 69.

that have sprouted up nationwide are providing a valuable alternative outlet for speakers who address primarily local audiences.

B. A Vast Array of New Multichannel Services and Competitive Video and Audio Alternatives Has Emerged to Provide Consumers with Even More Programming and Information Options.

1. Videocassettes, Wireless Cable, and SMATV Have Developed As Significant Alternative Information/Entertainment Providers.

Apart from newspaper, radio, and broadcast and cable television, there are now many alternative entertainment and information mechanisms that were not widespread or, in some cases, even in existence when the Commission first promulgated the newspaper/broadcast cross-ownership rules. These new alternatives foster vigorous competition among content providers. For example, videocassette sales and rental outlets now compete for consumers' entertainment dollars. About 80 percent of American households have VCRs, and videocassette rental and sales revenue in 1996 exceeded $15 billion.[73] Moreover, advertisers are increasingly turning to videocassettes as a mechanism for disseminating product information or conducting product demonstrations in the privacy of consumers' homes. By contrast, in 1975 the home-video industry was non-existent.[74]

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[73] See The Kagan Media Index, at 14.

[74] See OPP Working Paper at 4008 (Table 1).

On another front, publishers and broadcasters face competition from recent multichannel service entrants such as satellite master antenna television ("SMATV") and wireless cable ("MMDS"). As of October 1996, SMATV systems served 900,000 homes, while wireless cable systems served an expanding base of 1.1 million customers nationwide.[75]

2. Direct Broadcast Satellite Service Has Blossomed in Recent Years and Now Stands as a Competitive Threat to the Cable Industry.

The dramatic entry of DBS as an affordable television alternative is further evidence that the modern media bazaar is a highly charged competitive environment. DBS systems offer subscribers dozens of high-quality digital channels for a monthly fee that is competitive with cable television rates.[76] Since their introduction, more than 4.8 million households have signed up for satellite service;[77] manufacturers have at times been unable to keep up with demand.[78] Moreover, industry analysts forecast that DBS will serve as many as 12-15 million households by the year 2000.[79] At present, five providers compete to offer consumers DBS programming: DirecTV Inc.,

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[75] See The Kagan Media Index, at 8.

[76] See Doug Abrahms, Satellite Firms Dish Out TV Alternative to Cable, Wash. Times, Dec. 2, 1996, at D6.

[77] See Satellite Delivery Could Push PC-TV Integration, But Spectrum Allocated to Web Data is Necessary to Drive Sales, Multimedia Week, Mar. 31, 1997.

[78] Doug Abrahms, Pizza-Sized Dish is the Hottest Item on Home Telecommunications Menu, Wash. Times, Feb. 4, 1995, at C1.

[79] See 1997 Competition Report ¶ 38.

U.S. Satellite Broadcasting Corp., Primestar, EchoStar, and Alphastar.[80] One recent DBS entrant, EchoStar, has announced plans to join forces with News Corp., controlled by Rupert Murdoch, and hopes to broadcast more than 500 channels and to compete with local cable operators.[81] The continued rapid development of the DBS industry ensures that yet another long-term alternative media voice will compete in the mass media marketplace.

3. Satellite DARS Will Soon Enter the Marketplace Shortly and Provide a Multichannel Alternative to Conventional Radio Broadcasting.

Satellite-based radio, still in its infancy, may soon deliver a digital line-up of thirty channels of news, music, and entertainment, adding another voice to the highly competitive media fray. Digital Audio Radio Service ("DARS") will provide commercial-free, CD-quality audio programming to subscribers over newly developed digital radio sets.[82] In April 1997, the FCC auctioned two DARS licenses for a total of $173 million to American Mobile Radio Corp. and Satellite CD Radio Inc., clearing the way for the two companies to construct and launch the new service.[83] Both

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[80] See Albert B. Crenshaw, Satellite TV Services: Choices Can be Numbing, Wash. Post, Nov. 24, 1996, at H1.

[81] See News Corp. Buys 50 Percent Stake in Echostar, Creating DBS Giant, Satellite News, Mar. 3, 1997.

[82] See DARS Auction Closes, Raising $173 Million, Wash. Telecom News, April 7, 1997.

[83] Id.

companies hope to begin offering DARS programming to subscribers within two to three years.[84]

4. Telco Entry Into Video Programming May Soon Transform the Marketplace.

When the Telecommunications Act of 1996 was signed into law, it brought an end to the long-standing telco/cable cross-ownership ban. Under the new statutory regime, telephone companies can now actively compete in the video programming marketplace within their local service areas. In eliminating the telco/cable cross-ownership ban, Congress provided local exchange carriers ("LECs") with the option of offering video programming by operating a cable system, via wireless microwave-based cable technology, or by establishing an Open Video System.[85]

Already, LECs are enthusiastically embracing the opportunity to establish a new media voice. For example, Ameritech has obtained more than two dozen local cable television franchises and plans to build state-of-the-art systems to provide consumers with a competitive choice.[86] Another LEC, Pacific Bell, is anticipating a rollout of a commercial digital wireless cable system in the Los Angeles area by the first part of

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[84] Id.

[85] See Telecommunications Act of 1996, Pub. L. No. 104-104, § 302, 110 Stat. 56, 114 (amending §§ 651(a)(3) (Cable Systems), 651(a)(1) (Wireless Cable), 653 (Open Video Systems) of the Communications Act of 1934)).

[86] See Briefly Noted: Ameritech Corp's Ameritech New Media Unit, Interactive Video News, Oct. 14, 1996; Thomas P. Cohan, Cable Competition: The Key to Consumer Choice, Nation's Cities Weekly, Vol. 19, No. 44, Nov. 4, 1996, at 2.

1997.[87] Also, one local exchange carrier, Bell Atlantic-New Jersey, Inc., has obtained FCC approval to operate an Open Video System in Dover Township, New Jersey.[88] The long-term effect of telco entry, as intended by Congress, will be to foster the growth of new voices in the media marketplace while offering ever-increasing information and entertainment alternatives to consumers.

5. The Internet Has Emerged Virtually Overnight as a Major Information/Entertainment/Advertising Alternative.

Perhaps more than any other recent development, the emergence of the Internet, and its user-friendly interface known as the "world-wide web," holds the promise of universal access to virtually limitless sources of information. Worldwide computer networking for the average consumer via the Internet did not exist even a few years ago, let alone when the Commission first promulgated the newspaper/broadcast cross-ownership ban. But today, between twenty-five and forty million Americans are "on-line" via direct connections to the Internet,[89] with millions gaining access via nation-wide on-line computer networking services such as America Online, CompuServe, and

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[87] Brad Smith, PacTel Sees Video's Future as Wireless, Broadcasting & Cable, Vol. 126, No. 29, July 8, 1996, at 36.

[88] Bell Atlantic-New Jersey, Inc. Certification to Operate an Open Video System, 11 FCC Rcd 13249 (1996).

[89] See Edward Epstein, Internet Alters Art of Campaigning, S.F. Chronicle, Oct. 14, 1996, at A7.

Prodigy.[90] The Internet is an ideal medium through which to communicate both with members of the local community and with a broader national, and even worldwide, audience.

Already, the Internet has made substantial inroads as a mechanism for amplifying political debate. Following last year's election, approximately 8.5 million voters said that information they obtained on the Internet influenced their vote.[91] New services utilizing "push technology," such as Pointcast and Netcaster, allow subscribers to specify the types of news items and stories in which they are interested and have them delivered automatically to their own computers.[92] In addition, Internet-based offerings from non-traditional media entities have recently sprouted up. One example is Slate, a magazine published by software manufacturer Microsoft which has former CNN pundit Michael Kinsley at its editor's desk.[93] Another original content provider

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[90] See Doug Abrahms, AOL Often AWOL, But Users Aren't Deserting: Net's Gains Seen as Encroaching on TV, Wash. Times, Jan. 27, 1997, at A1.

[91] See Rajiv Chandrasekaran, Politics Finding a Home on the Net; Post-Election Surveys Show the Web Gains Influence Among Voters, Wash. Post, Nov. 22, 1996, at A4.

[92] See Arul Lowis, Answernet, Daily News, April 20, 1997 at 42; All Aboard the Push Band Wagon, Financial Times, April 23, 1997 at 21.

[93] Charles Waltner, In Web Years, Kinsley is Nearly a Veteran Now: After 4 Months Online, Slate's Editor Has Faith in the Medium, If Not Proof, Advertising Age, Nov. 4, 1996, at S18. Newspaper publishers also are utilizing the Internet as an additional outlet for providing news and information to the public. More than 500 North American daily newspapers have launched on-line services ranging from web sites to services with consumer on-line companies and local bulletin boards. NAA Facts About Newspapers at 12.

is NetRadio Network, a 24-hour Internet radio network that creates customized programming for users based on their personal profiles.[94]

Enhanced computer networking capabilities, such as real-time audio and video feeds, made possible by new high-speed Internet connections, promise to furnish consumers with even greater access to additional information alternatives from this burgeoning new medium. One high-speed access option, Integrated Services Digital Network ("ISDN"), which utilizes existing copper telephone plant, had 450,000 lines operating at the end of 1995 with expectations of 800,000 users on-line by the end of 1996[95] and record growth forecasted for 1997 and into the near future.[96] Another high-speed approach, a satellite-based Internet transmission system now available nationwide, utilizes a 21-inch satellite dish to receive Internet downloads at speeds up to fourteen times faster than traditional telephone modems.[97] Meanwhile, cable operators, anxious to participate in the Internet revolution, are beginning to roll out

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[94] See Kate Maddox, Web Business Advances to Next Stage -- Customized Content With Adaptive Response Capabilities Shores Up Electronic Commerce, CommunicationsWeek, Sept. 30, 1996, at 53. In fact, 846 radio stations already have sites on the Internet. See Broadcasting & Cable Yearbook 1996 at B-673 - B-688.

[95] See Room for All; ISDN, Cable Modems and DSS Compete for Retail Dollars, Comm. Daily, Mar. 29, 1996, at 5.

[96] See ISDN Will Survive Service Threats From Competing Technologies and Flourish in 1997, ISDN News, Jan. 14, 1997.

[97] See Satellite 'Net Access Offers Interim Broadband Solution, Internet Week, Nov. 25, 1996.

high-speed networks using coaxial cable-based modems in several U.S. cities.[98] As new technological pipelines are deployed, and as the computer-based information services industry matures, consumers will reap the benefits of expanded access to community, local, regional, and national news, political discussion, civic discourse, and other information resources.

Recent efforts by the White House promise to ensure the long-term viability of the Internet as a mass-communications medium. Recognizing the potential educational value of high-speed access, President Clinton has urged both the Commission and the communications industry to connect every school and library in the nation to the Internet.[99] Additionally, the President has called for $100 million in Federal funds to enhance the speed and capacity of the Internet.[100]

C. Outlets for Local and National News are Blossoming as the Media Increasingly Target Local Audiences and Specialized Information Needs.

In addition to the growth in the number and variety of media outlets since the newspaper/broadcast cross-ownership rules were adopted, there has been a proliferation of local, regional, and national news programming. For example, as noted above, "talk radio" has become an increasingly prominent force in the development of a

[98] See Cox, Cablevision Systems Launching Cable Modem Services, Media Daily, Sept. 13, 1996; Cathy Taylor, Key to the Highway: At Long Last, Cable Modem Rollout Begins from TCI, Time Warner; Tele-Communications Inc., MEDIAWEEK, Sept. 9, 1996, at 5.

[99] See Jube Shriver, Jr., FCC Urged to Require Wiring of Schools, Libraries for Info Age Policy, L.A. Times, Oct. 11, 1996, at D2.

[100] See id.

rigorous, robust forum for political discourse, as have other "civic-minded" radio formats such as news/talk, public affairs, and educational programming.[101]

Similarly, local newspapers -- often published with a suburban or ethnic[102] bent -- today provide a rich resource for readers concerned with community affairs and local politics. These and countless other regional newspapers emphasize community-oriented reporting. One executive, who manages twenty-one local newspapers for the New York Times Co., recently delivered the forecast for regional newspapers, proclaiming that "[t]he future is local, local, local, and nobody is going to out-local us."[103]

Americans also have benefitted in recent years from the development of several successful national news media outlets. USA Today has emerged as a national newspaper, successfully competing with other longer-established papers such as The Wall Street Journal[104] and New York Times. In television news, CNN has successfully developed an all-news format which has been mimicked at the local level both by television broadcasters and by cable system operators. In addition, a number of competitive entrants at the national level, specifically MSNBC and the Fox News

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[101] See supra Section V.A.1. (discussing popularity of newer radio format options).

[102] For example, currently on the nation's newsstands are some twenty Russian-language and over sixty Vietnamese-language newspapers. See Elizabeth Gleick, Read All About It, Time, Oct. 21, 1996, at 66, 69.

[103] Id.

[104] The Commission has determined that national newspapers such as USA Today and The Wall Street Journal are not subject to the cross-ownership restriction. See Stockholders of CBS Inc., 11 FCC Rcd 3733, 3779 (1995); Gannett Co., Inc., 102 FCC2d 1263, 1266 (1986).

Channel, now threaten to challenge CNN's dominance in the cable television news programming field.[105] Similarly, local and regional cable "all-news" channels are available on many cable systems.

There can be little doubt, then, that in the past two decades American consumers have been the beneficiaries of an abundant and ever-expanding array of local, regional, and national news and information sources. NAA submits that the availability of a sufficient number of voices in the market, and not the identity or relative "strength" of the speakers or the messages they deliver, is the key to a determination that adequate diversity exists. Where a sufficient number of such voices exist -- as it does now in virtually every market in the United States -- the Commission can be confident that the public will have access to a diversity of sources of information and opinion. In these circumstances, maintenance of a prohibition of common ownership of newspaper and broadcast outlets cannot be justified.

D. Broadcasters and Newspaper Publishers Face Additional Competitive Pressures from a Wide Variety of Non-Media Sources.

The variety of media and non-media sources competing for advertising dollars similarly eliminates any danger of undue concentration in the economic marketplace. For example, direct mail advertising has grown at an exponential rate and now closely rivals total daily newspaper advertising. Expenditures on direct mail in 1996 were

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[105] See Richard Zoglin, The News Wars: On TV and Radio, in Print and Over the Internet, News is Everywhere. But Are We Better Informed or Just Overwhelmed?, Time, Oct. 21, 1996, at 58, 60.

nearly $35 billion, or 20.2 percent of all advertising expenditures, and nearly three times the amount spent on radio ads.[106] Magazine sales, particularly by increasingly popular city, regional, and specialty publications, also have eroded newspapers' share of advertising revenues while providing additional sources of information and opinion. Magazines now generate $9.2 billion annually in advertising revenues, and account for 5.3 percent of all advertising expenditures.[107] Moreover, magazines and other sources of information and entertainment compete not just for advertising dollars but for consumers' time and attention.

Other competitors for advertising dollars include shoppers, pennysavers, bus and cinema advertising, which, along with other "miscellaneous" advertising vehicles, brought in over $21 billion in advertising revenues in 1996, or 12.6 percent of the national total.[108] Yellow pages and outdoor advertising also provide very substantial competition for advertising revenues, together accounting for 7.1 percent of 1996 ad revenues.[109] Current advertising revenue figures do not include the use of the Internet for advertising purposes. The Internet, however, offers virtually limitless possibilities for reaching either broad or very specialized audiences with information on products and services.

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[106] See NAA Facts About Newspapers at 10.

[107] See id.

[108] See id.

[109] See id.

In its Newspaper/Radio NOI, the Commission observed that "local newspapers captured 49% of local advertising expenditures (20.1% of all advertising) as against a total of 13.3% of local advertising (5.5% of all advertising) captured by radio stations."[110] The 49 percent figure relied upon by the Commission, however, is considerably oversimplified and overstated. For example, that figure includes revenues generated by the sale of classified advertising as well as local "retail" advertising.[111] NAA submits that classified advertising sales are irrelevant in the context of newspaper/broadcast competition, since radio and television stations typically have no involvement whatsoever in the classified ad field. The statistics cited by the Commission are further flawed in that they apparently do not include "breakouts" of local advertising revenues for such significant competitors as magazines, farm and business publications, and -- most significantly -- direct mail advertisers.

Moreover, neither the national nor the local advertising marketplace is the monolithic arena the Commission appears to assume. For example, newspapers depend heavily on classified advertising revenues, an area in which broadcasters are not involved. On the other hand, radio stations often target advertisers who seek to reach particular demographic groups or specialized audiences, whereas daily newspapers

[110] Newspaper/Radio NOI, 11 FCC Rcd at 13014 (citation omitted).

[111] See NAA Facts About Newspapers at 10; Robert J. Coen, '96 Expected to Deliver Energetic Ad Growth, Advertising Age, May 20, 1996, at 22 (Chart by McCann-Erickson Worldwide, US Advertising Volume). According to figures compiled by the NAA, 1996 classified advertising expenditures totaled $15.1 billion (8.7% of total expenditures), while retail ad revenues represented $18.4 billion (10.6%) for daily newspapers. NAA Facts About Newspapers at 10.

typically attract advertisers seeking to reach a broader, "mainstream" audience. Radio advertising also tends to be less expensive than television commercial time, and therefore is likely to attract a different customer base. In other words, advertisers utilize different media for different purposes, and analysis of competition among those media is not susceptible of any simple formulistic approach.

In any event, there is no suggestion on the record to date that newspaper/broadcast cross-ownership poses a threat of undue concentration either in the advertising market as an undifferentiated whole or in any particular sector of that market. As demonstrated above, broadcasters and newspaper publishers compete today in a highly diverse marketplace in which many of the vast array of alternative information providers also serve as alternative vehicles for advertising. Just as the very availability of an alternate media "voice" ensures diversity, the availability of a wide array of alternative outlets for advertising offsets any concern as to the current "market power" of any particular outlet. For example, cable advertising revenues, including local ad revenues, are growing rapidly, as are advertising revenues for magazines, direct mail services, and weekly and other specialized newspapers.[112]

The presence of those alternative outlets for advertising provides ample protection against any prospect of "market dominance" by newspapers or broadcast stations. Given the number of competing broadcast outlets in most markets and the rapidly expanding array of alternative media and advertising outlets, there is no reason to believe that ownership of broadcast stations by newspaper publishers, to the same

[112]See NAA Facts About Newspapers at 10.

extent such stations may be owned by any other party, is likely to have an appreciable impact on economic competition.[113]

VI. PERPETUATION OF THE ANACHRONISTIC NEWSPAPER/BROADCAST CROSS-OWNERSHIP BAN UNFAIRLY DISCRIMINATES AGAINST PUBLISHERS AND STATION OWNERS, FAILS TO ADVANCE LEGITIMATE DIVERSITY CONCERNS, AND UNNECESSARILY BURDENS FUNDAMENTAL FIRST AMENDMENT INTERESTS.

A. The Newspaper/Broadcast Cross-Ownership Restrictions Unfairly Single Out Newspaper Publishers and Broadcast Station Licensees, Who Are Denied the Opportunity to Take Advantage of Operational Synergies and Economies While Their Competitors Are Free to Pursue Advantageous Cross-Media Relationships.

As demonstrated in the preceding section, daily newspaper publishers and over-the-air broadcasters compete today in a technologically advanced and highly diverse marketplace for information, opinion, entertainment, and advertising that was unimaginable when the Commission determined, more than twenty years ago, to foreclose future newspaper/broadcast cross-ownership. Moreover, newspapers and broadcast station owners are virtually alone among the major information providers in facing an absolute governmental barrier to common ownership.

Indeed, unlike cable system operators and programmers, DBS, SMATV, and wireless cable service providers, local and long distance telcos, on-line services (e.g.,

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[113] To the extent any issue in this regard may arise in the context of a particular transaction, of course, it can be addressed by the Department of Justice or the Federal Trade Commission, the agencies charged with responsibility for administration of the antitrust laws and best equipped to undertake the appropriate market analysis.

America On Line, Prodigy), software providers (e.g., Microsoft), magazine publishers, and direct mailers, only broadcasters are restricted from publishing a newspaper. Moreover, while newspaper/broadcast combinations are banned, countless other cross-ownerships are entirely permissible, including the following:

- cable/radio
- cable "clustering" (ownership of multiple systems in adjacent areas)
- MMDS/broadcast
- MMDS/telco
- on-line services (America On Line, Prodigy)/cable
- on-line services/telco
- on-line services/broadcast
- software providers (Microsoft)/cable
- software providers/telco
- software providers/broadcast
- telco/broadcast
- telco/DBS
- DBS/broadcast

Further, in the years since the newspaper/broadcast cross-ownership restriction was adopted, the Commission, in some cases at the specific direction of Congress, has eliminated or substantially relaxed many of its other broadcast ownership limitations. For example, as the Commission recites in its Notice of Inquiry, "radio ownership limitations have been amended from allowing common ownership of only a single AM and single FM radio station in the same market to the current regulatory regime in which, depending on the number of voices in a market, as many as eight radio stations . . . may be commonly owned."[114] In addition, the Commission first raised and, at the direction of Congress, ultimately eliminated the numerical limitations on radio station and television station ownership, and raised the national television audience share cap from 25 percent to 35 percent.[115]

Similarly, the one-to-a-market rule already has been substantially relaxed, and the Commission is now considering its further relaxation or elimination. Thus, in 1989, the Commission adopted its current "Top 25/30 voices" presumptive waiver standard.[116] In addition, under the "case by case" standard, the FCC now routinely allows common ownership of a television station and as many as four radio stations in the same market.[117] Congress, in the Telecommunications Act of 1996, expressly directed the Commission to extend its waiver policies to the Top 50 markets.[118] The

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[114] Newspaper/Radio NOI, 11 FCC Rcd at 13009.

[115] Broadcast Radio Ownership, FCC 96-90 (rel. Mar. 8, 1996) (eliminating limitations on national radio ownership); Broadcast Television Ownership, FCC 96-91 (rel. Mar. 8, 1996) (eliminating numerical restriction on national television ownership and raising audience reach limit to 35 percent).

[116] Second Report and Order in MM Docket No. 87-7 (Amendment of Section 73.3555 of the Commission's Rules, the Broadcast Multiple Ownership Rules), 4 FCC Rcd 1741 (1989) ("1989 One-to-a-Market Decision"), recon. granted in part and denied in part, 4 FCC Rcd 6489 (1989).

[117] See, e.g., BREM Broadcasting, 9 FCC Rcd 1333 (1994) (TV/2AM/2FM in Pensacola, FL/Mobile, AL); Louis C. DeArias, Receiver, 11 FCC Rcd 3662 (1996) (TV/2AM/2FM in Spokane, WA).

[118] Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(d), 110 Stat. 56, 111 (1996).

agency now is considering how to implement that directive as well as whether it should eliminate the one-to-a-market rule entirely or further relax it in application through an expanded presumptive waiver policy.[119]

The pending television rulemaking proceeding also looks toward the relaxation of the television duopoly rule (from a Grade B overlap standard to "Grade A plus DMA") and asks whether and under what circumstances the Commission should permit common ownership of two television stations in the same market.[120] Finally, Congress in the Telecommunications Act of 1996 repealed the statutory ban on local television/cable cross-ownership, leaving the FCC free to consider elimination of that rule. As noted previously, Congress also directed the Commission to review all of its media ownership regulations biennially to determine whether they remain necessary.[121] That directive includes, of course, the newspaper/broadcast cross-ownership restrictions.[122]

NAA submits that the Commission should give broadcasters and newspaper publishers the freedom to continue to compete effectively with cable and other

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[119] See Second Further Notice of Proposed Rule Making in MM Docket Nos. 91-221 and 87-8 (Review of the Commission's Regulations Governing Television Broadcasting), FCC 96-438, ¶¶ 59-79 (Nov. 7, 1996) ("Review of Television Broadcasting Regulations").

[120] See id. ¶¶ 29-58.

[121] Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 111-12 (1996).

[122] As noted above, the former restriction on repealing or reexamining the rule is no longer contained in the FCC's appropriations legislation. See Newspaper/Radio NOI, 11 FCC Rcd at 13006-07, n.20.